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**REMARKS**

In the Office Action dated August 23, 2004, claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31, and 33 are pending. Claims 1, 13, and 28 have been amended and are independent claims from which all other claims depend respectively therefrom.

Claims 1-4, 6-8, 10, 13-15, 17-21, 23, 26-31, and 33 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Office Action states that the claimed invention is not within the technological arts and that it fails to promote the progress of sciences and useful arts. The Office Action states that the court in *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978) found that the claimed process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer. Although it is not clear to the Applicants that Claims 1, 13, and 28 are not within the "technological art" and that they fail to promote the progress of sciences and useful arts, claims 1, 13, and 28 have been amended such that at least one element of each claim is performed by a processor or computer and within a processor or computer. It appears from the Office Action that such amendment is needed to place claims 1, 13, and 28 within the "technological arts" and to promote the progress of sciences and useful arts and it is clear to the Applicants that in doing so assures that claims 1, 13, and 28 are within the "technological arts" and do promote the progress of sciences and useful arts. A claim limited to a machine or manufacture, which has a practical application in the technological arts, is statutory. See *Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557. Since a processor or a computer performs at least one element of each of claims 1, 13, and 28 to produce data in the form of a preferred product brand position and target product characteristics, claims 1, 13, and 28 are limited to a machine. The use of a processor or a computer to produce data that may be displayed cannot be characterized as an "abstract idea", but rather to a specific machine that produces a useful, concrete, and tangible result. See *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601. Thus, Applicants submit that with the amendment

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of claims 1, 13, and 28, that claims 1, 13, and 28 are now clearly within the "technological arts", therefore, claims 1, 13, and 28 now claim statutory material that is patentable under 35 U.S.C. 101.

Applicants note that although the specification of the present application does not explicitly state that the elements of claims 1, 13, and 28 can be performed by a processor or computer, this is implicit. Anyone skilled in the art and reviewing the application would readily recognize that the processes and methods of claims 1, 13, and 28 can be performed by a processor and/or computer. Throughout the specification many processes are described with various inputs. These processes gather data in the form of inputs and manipulate the data to provide an end result. It is well known that the gathering and manipulating of data can be performed by a processor or a computer. Also, several of the elements of claims 1, 13, and 28 state that a particular item is generated in response to the "function" of other items, for example, in claim 1 a preferred product brand position is generated as a function of product attributes. It is also well known in the art that a processor or a computer may be utilized to determine the result or output of a function. "The test for inherency is that a person skilled in the relevant art, reading a patent application,... would not have to undertake any independent experimentation in order to" find the missing discussion "inherent in the disclosures of the patent." *Stearn v. Superior Distributing Co.*, 674 F.2d 539, 544 (6<sup>th</sup> Cir. 1982). As stated, it would be clear to one skilled in the art that the elements of claims 1, 13, and 28 can be performed by a processor, a computer, or the like. As well, the Office Action of March 31, 2004, states that the steps of claims 1, 13, and 28 may be performed without the need of a computer or other technology, which implies that a computer or other technology may be used to perform the steps.

Claims 1-4, 6-8, 13-15, 17-21, 26, and 27 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cooper et al., "Building market structures from consumer preferences".

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The current Office Action states that Cooper discloses on page 7 and in Table 2 a brand-attribute matrix based on customer-oriented market research where some of the attributes include vehicle characteristics related to usage experience, driving experience and design, such as legroom, rear-seat room, engine size, horsepower, revolutions per mile and overall maintenance. Applicants, respectfully, traverse. Cooper does not disclose a brand-attribute matrix, but rather discloses a table of car-categories versus an attribute matrix. A vehicle brand is clearly different than a car-category. Example vehicle brands are Mercury, Chevrolet, and Cadillac. Example car-categories are subcompact domestic, import compact, and luxury domestic. Brands refer to the "Make", as known in the art, of a vehicle. For example, the company, make, and model of the Lincoln LS are Ford, Lincoln, and LS, respectfully. The car-category of the Lincoln LS may be Luxury Domestic. Nowhere in Cooper is a brand-attribute matrix mentioned or suggested.

The Office Action further states that Cooper discloses placing attributes in classes based on consumers' decision-making process, and thus brand personality importance and refers to page 3 for such disclosure. On page 3, in paragraphs 2-5, Cooper discloses that consumers evaluate brands on the basis of their underlying values. Cooper states that in other words consumers evaluate a car on the basis of attributes such as sportiness or comfort. The evaluation of a product by a consumer on the basis of various attributes is not the same as the grouping of particular attributes, the grouping of particular attributes to form an attribute class, or the grouping of particular attributes to form an attribute class corresponding to brand personality importance. For example, a consumer stating that a particular vehicle is sporty, has a stiff suspension, and has a large amount of leg room, is not the same as grouping a determined and preferred sportiness level, a suspension stiffness level, and a leg room amount to form an attribute class as desired for brand personality importance. In the first instance a consumer is simply evaluating a vehicle. In the second instance an attribute class is being generated in accordance with brand

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personality importance. Whether a consumer prefers a particular vehicle based on the level of sportiness that the vehicle provides is distinctly different from the grouping of multiple attributes based on a desired brand personality to develop or produce a certain type of vehicle.

The Office Action also states that on pages 3, 9, and 10 that Cooper discloses generating preferred vehicle brand positions and target vehicle characteristics where it states that consumers have different consideration sets of brands... a market can be divided into a certain number of submarkets in which homogeneous consumers consider a distinctive subset of brands with a particular rule of attribute evaluation and reference to a specific ideal point. Applicants submit that nowhere in Cooper are preferred vehicle brand positions determined. On page 3 Cooper portrays a competitive market as a series of heterogeneous competitive groups that have homogeneous consideration sets and preference structures. In determining the existing homogeneous sets Cooper states that consumers have different ideal profiles of brand. The existence of a brand profile in the view of a consumer is clearly different than determining a brand profile in accordance with brand personality importance for a new product. Also, in determining the heterogeneous competitive groups Cooper states that consumers have different consideration sets of brands. As such, Cooper states that a consumer considering a Lexus may consider an LS400, the Cadillac STS, or the Infinity Q45 and not the Hyundai Excel or Toyota Corolla. Selecting a vehicle within segments is also clearly not the same as the grouping of multiple attributes based on a desired brand personality to develop or produce a certain type of vehicle.

The tasks performed to identify that consumers have different ideal profiles of brand and different consideration sets of brands to portray and map a competitive market are unlike the tasks performed to development and generate a preferred brand profile for the production of a vehicle. In mapping a competitive market one is providing an understanding of the status of a current market. In

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developing and generating a preferred brand profile one is determining, for example, target attributes for which a particular brand of vehicle is to encompass in the future.

On page 9 of Cooper, Cooper refers to submarkets and provides examples in which cars of particular categories are losing or gaining momentum and also parameter estimates and standard errors for the submarkets in the form of a final model. Cooper, for example, states that midsize domestic cars are becoming more niche-players and thus losing momentum in the universal market, but gaining momentum in the domestic market. Again, this understanding of the status of certain submarkets is directed towards the current status of a market structure. Nowhere on page 9 is the determination or generation of a preferred brand profile mentioned or suggested.

On page 10 of Cooper, Cooper discloses, as stated in the previous Response, the universal market and provides a plot illustrating product categories in relation to price and size. Again this is irrelevant with regards to the generation of a preferred product brand position. The relation between product categories which each contain products from multiple brands, does not provide one with any knowledge regarding the brand position or profile under development of a particular product within a particular product segment.

The Office Action states that while the focus of Cooper may be on market structures it still must determine brand profiles in order to determine market structures. Applicants submit that whether this is true or not is irrelevant. Having knowledge of existing brand profiles is not the same as determining a preferred brand profile for a particular brand. Determining the current status of an existing brand is different than grouping multiple attributes based on a desired brand personality to develop or produce a certain type of vehicle.

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The Office Action also states that claims 1 and 13 are drafted broadly, specifically that they do not expressly recite how a preferred vehicle brand position is generated, rather, that it is merely a function of vehicle attributes. Applicants submit that each of claims 1 and 13 recite not only that a preferred vehicle brand position is generated as a function of product attributes, but also recite that a preferred vehicle brand position is generated through identification of a competitive set of products and associating each of the product attributes with a preferred competitive level with respect to the competitive set. A preferred vehicle brand position is generated by determining which products are competitive with the product being developed and by determining how the product being developed is to compare with those products in the competitive set. In determining how the product being developed is to compare, preferred competitive levels are assigned to the provided product attributes. Thus, Applicants submit that claims 1 and 13 do specifically state how a preferred vehicle brand position is generated.

The office action also states that claims 1 and 13 do not expressly recite how target vehicle characteristics are generated, rather, that they are merely a function of vehicle attributes and brand position. Applicants submit that each of claims 1 and 13 recite not only that target product characteristics are generated as a function of product attributes and a preferred product brand position, but also that they are generated as a function of classified product attributes. The product attributes are placed in an attribute class corresponding to the brand personality importance. Also, since the preferred product brand position is generated through the identification of a competitive set and the generation of competitive levels, the target vehicle characteristics are also generated therefrom. In addition, claims 1 and 13 recite that the target product characteristics represent customer-driven objectives for each of the product attributes, which are to be incorporated into the new product. The target product characteristics are generated by determining the classified product attributes for the product under development and by determining the

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competitive level for each of the classified attributes through customer driven objective representation. Thus, Applicants submit that claims 1 and 13 do specifically state how target product characteristics are generated.

Additionally, the Office Action states that it appears that the Applicants intend more specific meanings for "vehicle attributes" and "attribute classes". Applicants submit that sample definitions of the stated terms were provided in the previous Response to provide a better understanding of the claims. Whether these terms carry the specific meaning provided or a broader meaning again is irrelevant. Since Cooper fails to teach or suggest the developing of a brand profile for a new product, specifically, the grouping of particular attributes, the grouping of attributes to form an attribute class, the grouping of attributes to form an attribute class corresponding to brand personality importance, the generating of a preferred product brand position, the identifying of a competitive set of products, the associating of product attributes with a preferred competitive level with respect to a competitive set, and the generating of target product characteristics, as well as other recited features of claims 1 and 13, Cooper clearly does not anticipate claims 1 and 13. In order for a reference to anticipate a claim the reference must teach or suggest each and every element of that claim, see MPEP 2131 and *Verdegrad Bros. V. Union Oil Co. of California*, 814 F.2d 628. The Applicants are not aware of any elements of claims 1 and 13 that are taught or suggested by Cooper. Thus, Applicants submit that a more specific definition of the terms "vehicle attributes" and "attribute classes" is not necessary to overcome Cooper.

Applicants again note that Cooper is not directed towards or concerned with positioning of a brand or developing a brand profile, but is rather concerned with the mapping and portraying of the current status of a market structure. Thus, not only are the primary problems solved by Cooper and the present invention different, the methods as to how the problems are solved and elements involved therein are also different.

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Thus, Cooper does not teach or suggest a majority of the limitations recited in claims 1 and 13, therefore Applicants submit that claims 1 and 13 are novel, nonobvious, and are in a condition for allowance. Applicants also submit that since claims 2-4, 6-8, 14-15, 17-21, 26, and 27 depend from claims 1 and 13, respectively, claims 2-4, 6-8, 14-15, 17-21, 26, and 27 are also novel, nonobvious, and are in a condition for allowance for at least the same reasons.

Claims 28-30 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper and Eisner, "Essentials of Project and Systems Engineering Management".

The Office Action relies on Cooper for the disclosure of all the limitations of claim 28 except that of providing a cross-functional product team for which it relies on Eisner. Since claim 28 includes all of the limitations of claim 13, since Cooper does not teach or suggest a majority of the limitations of claim 13, and since Cooper does not teach or suggest the limitation of a cross-functional product team, Cooper also does not teach or suggest a majority of the limitations of claim 28.

As stated in the previous Response, like Cooper, Eisner also fails to teach or suggest brand positioning. Referring to MPEP 706.02(j) and 2143, to establish a *prima facie* case of obviousness the prior art references must teach or suggest all the claim limitations. Since neither Cooper nor Eisner alone or in combination teach or suggest each and every limitation of claim 28, claim 28 is also novel, nonobvious, and is in a condition for allowance. Since claims 29-30 and 33 depend from claim 28 they are also novel, nonobvious, and are in a condition for allowance for at least the same reasons.

Also, there is no motivation or suggestion in either Cooper or Eisner to combine and modify the stated references to arrive at the present invention. Referring to MPEP 2143.01, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also

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suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). There is no suggestion in either Cooper or Eisner for any combination thereof nor does the combination of each reference allow one to arrive at the present invention as is claimed in claim 28, since each and every element of claim 28 is not taught or suggested by Cooper, Eisner, or a combination thereof. Cooper maps a current state of a market structure and Eisner is directed towards interrelationships between project management and systems engineering. Neither reference develops a brand personality or a brand profile.

In light of the amendments and remarks, Applicants submit that all objections and rejections are now overcome. The Applicants have added no new matter to the application by these amendments. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, she is respectfully requested to call the undersigned attorney.

Respectfully submitted,

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